

PT 97-15

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

JO DAVIESS WORKSHOP, INC.)	
Applicant)	
)	Docket # 93-43-6
v.)	
)	Parcel Index # 43-22-200-141-09
THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Richard E. Alexander appeared on behalf of Jo Daviess Workshop, Inc.

Synopsis:

The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on May 10, 1996, to determine whether or not Jo Daviess County Parcel No. 43-22-200-141-09 qualified for exemption from real estate taxation during the 1993 assessment year.

Mr. Don Gereau, executive director of Jo Daviess Workshop, Inc. (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include first, whether the applicant owned this parcel during the 1993 assessment year. The second issue is whether the applicant is a charitable organization. The final issue is whether the applicant used this parcel for primarily charitable purposes or did it lease or otherwise use this parcel for profit, during the 1993 assessment year.

Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned this parcel during the entire 1993 assessment year. It is also determined that the applicant is a charitable organization. Finally, it is determined that the applicant did not use this parcel for primarily charitable purposes during 1993 but rather leased it for profit.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel did not qualify for exemption during the 1993 assessment year, was established by the admission in evidence of Department's Exhibits numbered 1 through 5B.

2. The applicant was incorporated under the name of the Jo Daviess County Association For Retarded Children, Inc. on July 30, 1964, pursuant to the "General Not For Profit Corporation Act" of Illinois, for purposes which included the following:

To promote the general welfare of mentally retarded wherever they may be; to foster the development of programs in their behalf; to encourage research related to mental retardation; to advise and aid parents in the solution of their problems and to coordinate their efforts and activities; to develop a better understanding of the problems of mental retardation by the public;.... (Appl. After-filed Ex.)

3. On December 29, 1983, Articles of Amendment to the Articles of Incorporation were filed changing the name of the above organization to Jo Daviess Workshop, Inc. (Appl. Ex. 3)

4. Pursuant to a hearing, it was determined by the Director of the Department in Docket Nos. 82-43-1 and 82-43-2 that the applicant was a charitable organization. (Appl. After-filed Ex.)

5. During 1993, the applicant provided education and training for people with disabilities. The applicant worked with persons with severe head injuries, the mentally retarded, the mentally ill, the sight impaired and the physically disabled by providing them with education and job training. (Tr. p. 11)

6. The applicant also operates a county wide transit system (hereinafter referred to as "Transit System") which provides transportation for senior citizens and the disabled. Over 50% of the ridership of this transit system are persons with disabilities, who use this system to access the applicant's workshop and those persons' job sites. (Tr. pp. 11 & 12)

7. During 1993, the applicant operated seven separate entities: the Transit System; the support services group, which keeps the records and does the education and training; and five small businesses. The five small businesses which the applicant operates employ some of the applicant's clients. (Tr. p. 13)

8. The applicant acquired this parcel and other lands by a warranty deed dated July 26, 1982. (Dept. Ex. No. 1C)

9. By 1990, the applicant had constructed its workshop building for the handicapped and also its garage for the Transit System on the land which it owned that is adjacent to this parcel. (Tr. p. 15)

10. The local administrator of the Illinois Department of Public Aid (hereinafter referred to as "Public Aid") approached the applicant, during 1990, about constructing a building which Public Aid could lease to serve its clients in Jo Daviess County. (Tr. p. 15)

11. Public Aid had come to the applicant to construct a building for it because of the enactment of the Americans With Disabilities Act. The Act has requirements concerning accessibility which were shortly going to become effective. (Tr. p. 15)

12. Pursuant to this request, the applicant constructed a one story building on this parcel, which contained 2,623 square feet. (Dept. Ex. No. 1) The applicant also constructed an asphalt parking lot for 20 cars on said parcel. The parcel here in issue contains a total of 10,890 square feet. (Dept. Ex. Nos. 1 & 1D)

13. On June 7, 1990, the applicant entered into a lease with Public Aid, of the building and parking lot on this parcel for a base term of five years, from August 1, 1990, to July 31, 1995, for rent of \$1,424.00 per month. (Dept. Ex. No. 1F)

14. Approximately 50% of the clients of the applicant receive some Public Aid services. (Tr. p. 15)

15. Public Aid uses the building on this parcel to conduct interviews, make eligibility determinations, and provide case management services to families with dependent children, the aged, blind and disabled. They also provide food stamps at this building. (Dept. Ex. No. 3)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The Supreme Court long ago determined that the question of whether property is exempt from taxation depends upon the constitutional and statutory provisions in force at the time for which the exemption is claimed. The People v. Salvation Army, 305 Ill. 545 (1922). The statutory provision in force during

1993 concerning the exemption of real property from real estate taxation was 35
ILCS 205/19 *et seq.*

35 **ILCS** 205/19.7 exempts certain property in part as follows:

All property of institutions of public charity, all property of
beneficent and charitable organizations, whether incorporated in
this or any other state of the United States,...when such
property is actually and exclusively used for such charitable or
beneficent purposes, and not leased or otherwise used with a view
to profit:....

35 **ILCS** 205/19.16 exempts certain property in part as follows:

Parking areas, not leased or used for profit, when used as a part
of a use for which an exemption is provided hereinbefore and
owned by any...charitable institution which meets the
qualifications for exemption.

35 **ILCS** 205/19.5 exempts certain property as follows:

All property of every kind belonging to the State of
Illinois.

It is well settled in Illinois, that when a statute purports to grant an
exemption from taxation, the fundamental rule of construction is that a tax
exemption provision is to be construed strictly against the one who asserts the
claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141
(1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v.
National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever
doubt arises, it is to be resolved against exemption, and in favor of taxation.
People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944)
and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934).
Finally, in ascertaining whether or not a property is statutorily tax exempt,
the burden of establishing the right to the exemption is on the one who claims
the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts
of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd

Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

The Illinois Courts have consistently stated the general principle that the use of property to produce income is not an exempt use, even though the net income is used for exempt purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). See also The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It should also be noted that if property, however owned, is let for return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial whether the owner makes a profit, or sustains a loss. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135 (1934).

In the case of The Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st. Dist 1983), the Appellate Court considered a case where the First Presbyterian Church of Oak Park owned two adjoining parcels of land which it used as a parking lot on Sundays from 9 A.M. to 10 P.M. and which it leased during the rest of the week to the Village of Oak Park, for profit. In that case, the Village relied on the decision in Children's Development Center, Inc. v. Olson, 52 Ill.2d 332 (1972), and alleged that the church parking lot should be exempt since it was leased by a religious organization to the Village. In rejecting that argument, the Appellate Court stated as follows:

The section 19.7 exemption, like that in section 19.2 for religious institutions, turns on the primary use of the property. Unlike those provisions, the exemption provided for municipalities turns solely on ownership of the property

The Appellate Court then went on to hold that to broaden the municipal exemption to include property only used for municipal purposes and not owned by a municipality, would add a new exemption to paragraph 19.6 which the Court refused to do. The cause before me is very similar to the Village of Oak Park

v. Rosewell case, in that here the applicant is exempt pursuant to 35 **ILCS** 205/19.7, which is the charitable exemption. That exemption is identical in relevant part to 1981 Illinois Revised Statutes, Chapter 120, Paragraph 500.7 and also requires use for a charitable purpose. In the Village of Oak Park case, the First Presbyterian Church was leasing the property for profit to the Village. The Village exemption is based solely on ownership, as is the State of Illinois exemption in this case. Consequently, to attempt to apply the holding in the Childrens Development Center case to this case would again require adding a new exemption to 35 **ILCS** 205/19.5, which like the Court in Village of Oak Park, I am loath to do.

I therefore conclude that Jo Daviess County parcel No. 43-22-200-141-09 was not primarily used for charitable purposes during the 1993 assessment year but rather was used for profit, during that year.

I therefore recommend that Jo Daviess County Parcel No. 43-22-200-141-09 remain on the tax rolls for the 1993 assessment year and be assessed to the applicant, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
May 13, 1997